

Predecisional Staff Draft
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What should the requirements for General Conformity be? Will there be different de minimis emission levels for Federal Actions?

i. Background

What is the purpose of the General Conformity Regulations?

Section 176(c) of the Clean Air Act requires that before a Federal entity takes an action that it must make a determination that the proposed action will not interfere with the SIP on the State's ability to attain maintain the NAAQS. In November 1993, EPA promulgated two set of regulations to implement section 176(c). One set know as the Transportation Conformity Regulations deal with approval and funding of highway and mass transit project. The other set known as the General Conformity Regulations deal with all other Federal activities. Besides ensuring that Federal actions will not interfere with the SIP, the program also foster communications with State/local air quality agency, allows for public participation in the review air quality from the action, and allows for project level review. In 1995, Congress limited the application of section 176(c) to non-attainment and maintenance areas only.

How is the general conformity program currently structured?

Due to the very broad definition of Federal actions in the statute and the number of Federal agencies subject to the conformity requirement, the number of individual conformity decisions could have been in the order of thousand per day. To avoid creating an unreasonable administrative burden, EPA established de minimis emissions levels and identified a number of actions which were exempt from the rule. In addition, the regulations allow Federal agencies to develop their own list of actions which are presumed to conform. For non-exempt actions which increase emissions above the de minimis levels, the Federal agency must demonstrate that the action will conform with the SIP or will not cause or contribute to any new violation of any standard in any area; interfere with provisions in th applicable SIP for maintenance of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestone. The EPA is currently reviewing the general conformity program and, in a separate action, may revise the regulations.

Who runs the general conformity program?

Each Federal agency is responsible for determining if the action is subject to the conformity regulations and if so, does the action conform with the SIP. Agencies approach to the conformity evaluation differ depending upon the actions being taken. Agencies which are permitting or funding actions subject to the conformity rules generally require the applicant to

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develop the technical support for the conformity determination. While other agencies undertake the complete evaluation themselves.

How does an agency demonstrate conformity?

Depending upon the pollutant and specific situation, Federal agencies have several options to demonstrate conformity. For actions in ozone non-attainment and maintenance areas, the Federal agency can demonstrate that the project/action is specifically identified and accounted for in the SIP, obtain documentation from the State that the emissions are included in the SIP, have the State commit to include the emissions in the SIP, mitigate the emissions or offset the emissions from emissions reductions within the same non-attainment or maintenance area.

- ii. General Conformity Regulations Revisions for the 8-hour Ozone Standard.

What de minimis emission levels will be set for ozone precursors?

For ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen NOx)) EPA is proposing to retain the existing de minimis emission levels. Those levels were based on the definition of a major stationary source for new source review program as established by sections 182, 183, and 302 of the Clean Air Act. The current de minimis levels are:

Type of Ozone Area	VOC Tons/year	NOx Tons/year
Extreme Nonattainment	10	10
Severe Nonattainment	25	25
Serious Nonattainment	50	50
Moderate and Marginal Nonattainment in the Ozone Transport Region	50	100
Other Nonattainment	100	100
Maintenance in Ozone Transport Region	50	100
Other Maintenance	100	100

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What impact will the implementation of the new standard have on State Conformity SIP?

Since EPA is not proposing to make specific revisions to its General Conformity Regulations, States should not have to revise their General Conformity SIPs.

Are there any other impacts on the SIPs related to general conformity from the conversion to the 8-hour standard?

Since EPA is currently reviewing the General Conformity Regulations and may revise them in the near future, no other revision are proposed at this time. However, in developing SIPs for the 8-hour ozone standard, EPA recommends that State and local air quality agencies work with major facilities which are subject to the General Conformity Regulations (e.g., as commercial airports and large military bases) to establish an emission budget for those facilities in order to facilitate future conformity determinations. Such budget could be used by Federal agencies in determining conformity or identifying mitigation measures.